

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of: )  
)  
Walnut Hill Telephone Company )  
)  
Request for Review by Walnut Hill Telephone )  
Company of a Decision of the Universal Service )  
Administrator )  
)  
Petition for Waiver of Section 32.27(c) of the )  
Commission's Rules. )  
)

ORIGINAL

WC Docket No. 08-71

CC Docket No. 96-45  
~~FILED~~/ACCEPTED

DEC 20 2011

Federal Communications Commission  
Office of the Secretary

**REQUEST FOR REVIEW BY WALNUT HILL TELEPHONE COMPANY  
OF A DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR AND  
PETITION FOR WAIVER**

Walnut Hill Telephone Company ("Walnut Hill"), by its attorneys and pursuant to Sections, 1.3, 32.18, 54.719, and 54.722 of the Commission's Rules, hereby respectfully submits this Request for Review of a Decision of the Universal Service Administrator and Petition for Waiver, *nunc pro tunc*, of the requirements of Section 32.27(c) of the Rules. Application of the rule would require Walnut Hill to record certain equipment lease payments to an affiliate at a fully distributed cost and reduce the company's high-cost recovery, where the company could have avoided this outcome by choosing a more expensive leasing arrangement from a third party. Walnut Hill requests that the waiver include the period of time during which the lease payments were made in 2004 and 2005 through the present.

As described below, a waiver of the rule is justified, and the Universal Service Administrative Company's ("USAC") decision in Audit No. HC-2009-FL056/Follow-up Audit

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HC 2007-166 to recover amounts associated with the equipment leases should be reversed. In support hereof, the following is shown:

**I. Background**

Walnut Hill is a small, rural, incumbent local exchange carrier providing exchange and exchange access telecommunications services in southwest Arkansas, study area code 401729, with approximately 4170 access lines.

From April 16, 2010, to August 4, 2010, Walnut Hill underwent an audit under the FCC's Office of the Inspector General audit program pertaining to disbursements made from the universal service fund ("USF") during the twelve-month period ended June 30, 2007. The audit was conducted by KPMG, LLP, which provided its final report to the USAC on August 4, 2010.<sup>1</sup>

Part of KPMG's findings included a determination that twenty six lease payments made for vehicles and other work equipment by Walnut Hill to its parent company, Townes Telecommunications, Inc., ("TTI") were not recorded in compliance with Section 32.27(c)(3),<sup>2</sup> which requires services received by a carrier from an affiliate that exists solely to provide services to members of the carrier's corporate family be recorded at full distributed cost. Specifically, KPMG determined that Walnut Hill's use of the actual cost of equipment leased to Walnut Hill, rather than fully distributed cost, was a violation of the rule and resulted in HCL, LSS, and ICLS disbursements that were higher than they would have been had they been recorded at fully distributed cost.<sup>3</sup> Based on this report, USAC determined it would recover

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<sup>1</sup> *Walnut Hill Telephone Company Follow-up Audit Number HC-2009-FL056*, prepared by KPMG for USAC, August 4, 2010, relevant portions attached hereto as Appendix A. (KPMG Report).

<sup>2</sup> *KPMG Report* at 15.

<sup>3</sup> *KPMG Report* at 15.

\$447,967 in high cost support in relation to the equipment lease discussed above; from future USF disbursements to Walnut Hill.<sup>4</sup>

Walnut Hill appealed USAC's decision by letter to USAC on the grounds that applying the rule to Walnut Hill created an unreasonable and uneconomical result, and asked USAC not to apply the rule in this circumstance.<sup>5</sup> In its letter, Walnut Hill argued that it is unreasonable to expect a small company like Walnut Hill to purchase such equipment itself, due to the equipment's capital-intensive nature, and the fact that the lease rates from the corporate affiliate were less than those available through a third party.<sup>6</sup> Thus, under the circumstances, the most reasonable and economic course for Walnut Hill was to lease the equipment from TTI. Walnut Hill demonstrated that it would have been charged a lease rate greater than the rate it paid if it had leased from a third-party vendor.<sup>7</sup> In other words, Walnut Hill's lease expense was significantly reduced by leasing the equipment from TTI. Walnut Hill thus requested that USAC accept fair-market value data rather than the fully distributed cost to determine that Walnut Hill's USF disbursement was reasonable for the twelve month period ending June 2007.

While USAC recognized Walnut Hill's arguments, it nevertheless rejected the appeal without addressing the merits of Walnut Hill's argument, solely on grounds that only the Commission could waive application of the rule.<sup>8</sup> Therefore, Walnut Hill respectfully submits this request for waiver, *nunc pro tunc*, of Section 32.27(c), and for review and reversal of USAC's decision to recover the funds in question.

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<sup>4</sup> Letter from Craig Davis, Director, High Cost, USAC, to Debi Nobles, Vice President, Regulatory Affairs for Walnut Hill, dated October 5, attached hereto as Appendix B.

<sup>5</sup> Letter from Benjamin H. Dickens, Jr., of Blooston, Mordkofsky, Dickens, Duffy, & Prendergast, LLP, to High Cost and Low Income Division, USAC, dated Letter Nov 29, 2010, attached hereto as Appendix C.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Letter from Universal Service Administrative Company to Debi Nobles, Vice President, Regulatory Affairs for Walnut Hill, dated October 24, 2011, attached hereto as Appendix D.

## **II. Section 32.27 Requirements**

Section 32.27(c) requires that, "For all other services sold by or transferred to a carrier from its affiliate, the services shall be recorded at no more than the lower of fair market value and fully distributed cost."<sup>9</sup> Subpart (3) of the 32.27(c) further specifies that, "[a]ll services received by a carrier from its affiliate(s) that exist solely to provide services to members of the carrier's corporate family shall be recorded at fully distributed cost."<sup>10</sup>

## **III. Waiver Standard**

Section 32.18 sets out the standard for a waiver of the provisions of the Part 32 accounting system. Under that section, waiver is appropriate where "such a waiver is in the public interest" and the applicant's request for waiver "expressly demonstrates that: existing peculiarities or unusual circumstances warrant a departure from a prescribed procedure or technique; a specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal of operating results or financial condition, consistent with the principles embodied in the provisions of this system of accounts; and the application of such alternative procedure will maintain or improve uniformity in substantive results as among telecommunications companies."

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<sup>9</sup> 47 CFR 32.27(c).

<sup>10</sup> 47 CFR 32.27(c)(3).

The Commission has, on several occasions, waived the accounting requirements of Section 32.27, where the public interest was served by allowing a carrier to avoid unnecessary expense,<sup>11</sup> albeit under different factual circumstances.

Section 1.3 of the Rules states, in relevant part, that “[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.” According to controlling precedent,<sup>12</sup> a rule waiver “may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.”<sup>13</sup> The Commission has held that, “a waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.”<sup>14</sup>

## V. Argument

The requested waiver meets the standards of the Commission’s waiver rules and applicable precedent. Walnut Hill acted reasonably and in an economic fashion when it leased the equipment at issue from TTI. However, application of the rule would have the perverse effect of requiring Walnut Hill to have pursued a more costly alternative for the same services.

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<sup>11</sup> See, e.g., In the Matter of US West, Inc.; Petition for Waiver of Section 32.27(c) of the Commission's Rules, 15 FCC Rcd 4400 (2000) (granting a waiver to allow US West to use fully distributed cost rather than incur the expense of a fair market valuation); In the Matter of Verizon Telephone Companies; Petition for Waiver of Section 32.27(c) of the Commission's Rules, 17 FCC Rcd 6997(2002); In the Matter of Qwest Services Corporation; Petition for Waiver of Section 32.27(c) of the Commission's Rules, 18 FCC Rcd 770 (2003).

<sup>12</sup> WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972). Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164(D.C. Cir. 1990).

<sup>13</sup> See, e.g., In re Joint Waiver Request by Stratophone, LLC & SkyTel Spectrum, LLC, 25 FCC Rcd 8581, 8587 (F.C.C. 2010) at n54.

<sup>14</sup> In the Matter of Request for Waiver of Section 54.611 of the Commission's Rules; Unicom, Inc. Anchorage, Alaska; Rural Health Care Universal Service Support Mechanism, 21 FCC Rcd 11240, 11243 (2006), citing Northeast Cellular.

As shown in the list of third-party lease rates obtained by Walnut Hill and provided to USAC in its letter of appeal,<sup>15</sup> Walnut Hill would have paid a greater lease rate for most of the leased items if it had leased this equipment from a third party vendor.<sup>16</sup> Taken in total, the lease rate from a third party vendor would have been approximately 15% to 20% higher, depending on whether equipment was leased at monthly or annual rates.

Granting the waiver thus satisfies the public interest requirements of both 32.18 and 1.3. The Commission's policy objective in promulgating its affiliate transaction rules was to protect the public (and underlying rates paid by the public and subject to regulation) from less than arm's length transactions which routinely occur in the carrier market. It is surely in the public interest, then, to avoid the application of the instant rule, where it would otherwise increase the cost of service.

Specifically, when the Commission last revised 32.27 to include the present language,<sup>17</sup> it recognized that, "our current treatment of services that are neither tariffed nor subject to prevailing company prices made generally available may in fact reward a carrier that acts imprudently when buying ... and selling services to an affiliate."<sup>18</sup> Previously, the rules required services purchased from a non-regulated affiliate at fully distributed cost, regardless of whether that figure was higher or lower than fair market value. The Commission was concerned that a carrier would intentionally pay more for services purchased from an affiliate, despite lower rates being available from third parties, which would in turn harm rate payers. In this case, the exact opposite effect is occurring: the rule is discouraging a carrier from paying less for services purchased from an affiliate, compared to higher rates available from third parties. Grant of the

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<sup>15</sup> See Appendix C at Attachment A.

<sup>16</sup> *Id.*

<sup>17</sup> In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, 11 FCC Rcd 17539, 17541 (FCC 1996).

<sup>18</sup> *Id.* at ¶145.

requested waiver would thus reward efficient behavior with consequent benefit for consumers, consistent with the Commission's policy.

The remaining requirements of Section 32.18 are satisfied as well. As described above, waiver is appropriate under Section 32.18 where a carrier shows i) existing peculiarities or unusual circumstances warrant a departure from a prescribed procedure or technique; ii) a specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal of operating results or financial condition, consistent with the principles embodied in the provisions of this system of accounts; and iii) the application of such alternative procedure will maintain or improve uniformity in substantive results as among telecommunications companies.

Because Walnut Hill's affiliate lease payments were less than third party vendor rates for the same equipment, its choice was economic and warrants a departure from the rule. Moreover, its lease rates portray more accurate results for the cost of these services in the market, and should improve uniformity among its peers, since it would not have been artificially imputed to have utilized an uneconomic alternative. The request rule waiver therefore should be granted.

Walnut Hill also seeks review of the USAC decision. For reasons described in the foregoing discussion, the Commission should also review and reverse USAC's decision to recover funds associated with the leasing arrangements. USAC's decision to recover the funds at issue here appears based entirely upon its inability to waive application of the rule as requested by Walnut Hill. Therefore, grant of Walnut Hill's Petition for Wavier, *nunc pro tunc*, will remedy the issue identified by USAC as grounds for its decision, and the decision should subsequently be reversed.

**VI. Conclusion**

For the forgoing reasons, Walnut Hill respectfully requests the Commission grant its petition for waiver of Section 32.27(c) in the above-described circumstances and reverse the USAC decision to recover USF amounts associated with the above-referenced equipment.

Good cause exists to waive the requirements of Section 32.27(c) of the Commission's Rules because, as discussed above, application of the rule in this circumstance creates a perverse incentive that runs counter to the Commission's policy underlying its affiliate transaction rules. Therefore, the public interest will be served by granting the requested waiver, and the requested reversal of USAC's decision.

Since USAC's decision to recover the above-referenced amounts is based on its inability to waive Section 32.37(c), Walnut Hill also respectfully requests the Commission also reverse USAC's decision.

Respectfully submitted,

**Walnut Hill Telephone Company**

By: 

Benjamin H. Dickens, Jr.  
Salvatore Taillefer, Jr.  
Its Attorneys

Blooston, Mordkofsky, Dickens,  
Duffy & Prendergast, LLP  
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Washington, D.C. 20037  
Tel: 202-828-5540

Filed: December 20, 2011

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of: )

Walnut Hill Telephone Company )

Request for Review by Walnut Hill Telephone )  
Company of a Decision of the Universal Service )  
Administrator )

Petition for Waiver of Section 32.27(c) of the )  
Commission's Rules. )

CC Docket No. 96-45

**DECLARATION OF DEBORAH NOBLES**

I, Deborah Nobles, do hereby, under penalty of perjury, declare and state as follows:

1. My name is Deborah Nobles. I am employed by Walnut Hill Telephone Company ("Walnut Hill") as Vice President of Regulatory Affairs. In that capacity, I am familiar with Walnut Hill's filings with the Universal Service Administrative Company ("USAC") and its compliance with the Commission's rules. I am also familiar with the audit conducted on behalf of USAC regarding Walnut Hill's compliance with the requirements of the Federal High Cost Universal Service Program for the period of time considered in the foregoing Request for Review by Walnut Hill of the Decision of the Universal Service Administrator and Petition for Waiver ("Petition for Review").
2. In accordance with Commission rule 54.721(b), I have review the factual assertions set forth in Walnut Hill's Petition for Review and hereby certify that such factual assertions are true and correct to the best of my knowledge.

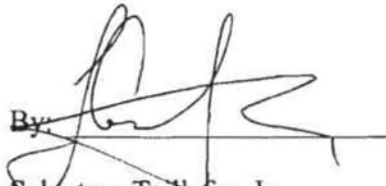
  
Deborah Nobles

Dated: 12/20/11

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 20<sup>th</sup> day of December, 2011, a copy of the foregoing **Request for Review by Walnut Hill Telephone Company of a Decision of the Universal Service Administrator and Petition for Waiver** was served upon the following by US Mail, postage prepaid:

Universal Service Administrative Company  
2000 L Street NW, Suite 200  
Washington, DC 20036

By:   
Salvatore Taillefier, Jr.

## APPENDIX A



High Cost and Low Income Division

Certified Mail, Return Receipt Requested

September 28, 2010

RE: Results of the Follow-Up Audit to the 2007-2008 Federal Communications  
Commission (FCC) Office of the Inspector General (OIG) Audit

Dear Beneficiary:

Enclosed are the finalized report from, and the USAC High Cost Management Response to, the follow-up audit to your FCC OIG audit. Included in the High Cost Management Response may be directives required for the closure of audit findings and/or comments. Please complete any such follow-up measures and provide documentation of corrective actions to USAC High Cost within 60 days of receipt of this letter, if applicable.

As is the case with any administrative decision made by USAC, you have the right to appeal findings and/or comments within the audit and High Cost Management Response. You may appeal to USAC or the FCC, and the appeal must be filed within 60 days of receipt of this letter. Additional information about the appeals process may be found at <http://www.usac.org/hc/about/filing-appeals.aspx>.

If you have any questions, please contact the High Cost Program at 202-776-0200 or [hcaudits@usac.org](mailto:hcaudits@usac.org). Please direct all High Cost audit correspondence to either the e-mail address above or:

USAC  
Attn: HC Audits  
2000 L Street, NW  
Suite 200  
Washington, DC 20036

Sincerely,

*High Cost Program Management*

Enclosure: Final Audit Report



*Walnut Hill Telephone Company*  
*Follow-up Audit Number: HC-2009-FL056*  
*(SAC Number: 401729)*

*Performance audit for the Universal Service Fund*  
*disbursements made during the twelve-month period*  
*ended June 30, 2007*

Prepared for: Universal Service Administrative Company

As of Date: August 4, 2010

KPMG LLP  
345 Park Avenue  
New York, NY 10154

2. HC-2009-FL056-F02: Unsupported and Inappropriately Classified Expenses

**Condition**

Thirty of the 45 expense samples selected for testing were identified as exceptions. The details are as follows:

- a) Twenty six of the 30 exceptions related to lease payments, of \$94,717 per month, for Vehicles and Other Work Equipment, made by the Beneficiary to its parent company (TTI), were unsupported. In addition, these lease payments were not in compliance with FCC Rules and Orders governing affiliate transactions and were determined using a "fair market value" rate, when the Rules require that such transactions be recorded on a fully distributed cost basis. These expenses totaled \$2,117,978; \$1,059,010 for 2004 and \$1,058,968 for 2005.
- b) Two of the 30 exceptions related to expenses that were inaccurately recorded in a regulated account (Account 672015 - Other Expense), instead of a non-regulated expense account (Account 931145 - Internet Expense). These expenses totaled \$10,776 and were for

2005.

- c) Two of the 30 exceptions related to expenses that were inaccurately recorded in a plant non-specific account (Account 672012 - Telecommunications Expense), instead of a plant specific account (Account 6232 - Circuit Equipment Expense). These expenses totaled \$8,952 and were for 2004.

**Criteria**

According to 47 C.F.R. § 32.27(c)(3), "All services received by a carrier from its affiliate(s) that exist solely to provide services to members of the carrier's corporate family shall be recorded at fully distributed cost."

In addition, according to 47 C.F.R. § 32.12(a) and (b), "The company's financial records shall be kept in accordance with generally accepted accounting principles to the extent permitted by this system of accounts. The company's financial records shall be kept with sufficient particularity to show fully the facts pertaining to all entries in these accounts."

Further, according to 47 C.F.R. § 54.202(e), "All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. These records should include the following: data supporting line count filings; historical customer records; fixed asset property accounting records; general ledgers; invoice copies for the purchase and maintenance of equipment; maintenance contracts for the upgrade of equipment; and any other relevant documentation. This documentation must be maintained for at least five years from the receipt of funding."

**Cause**

The preparation, review and approval processes related to the calculation of lease payments did not identify the requirement to perform the calculation at fully distributed cost. In addition, the expense reporting process did not identify the requirement to properly record costs to the appropriate regulated account, or detect the recording of non-regulated amounts to regulated accounts.

**Effect**

The exceptions identified above have an impact on HCL, LSS and ICLS disbursements. The monetary impact of this finding, relative to disbursements made from the USF for the HCP for the twelve-month period ended June 30, 2007 is estimated as follows:

- HCL disbursements calculated in the 2004 and 2005 data submissions were \$249,807 higher than they would have been had amounts been reported properly.
- LSS disbursements calculated in the 2005 data submission were \$41,860 higher than they would have been had amounts been reported properly.
- ICLS disbursements calculated in the 2004 data submission were \$156,300 higher than they would have been had amounts been reported properly.

**Recommendation** The Beneficiary should enhance the preparation, review and approval processes governing the affiliate transactions. In addition, the Beneficiary should establish an appropriate methodology to record the expense amounts to the appropriate regulated or non-regulated accounts.

**Beneficiary Response** The Company takes issue with the first item in this finding. The Company notes initially that its parent Company TTI is a holding company whose primary functions are: (1) to search out and evaluate potential investments in a broad range of telecommunications and non-telecommunications businesses; and (b) to make investments if and when they are deemed beneficial and appropriate to TTI and its owners. TTI is clearly and obviously not an affiliate of the Company that exists "solely to provide services to members of the [Company's] corporate family." Therefore, any leases or other services received by the Company from TTI are not governed by the final sentence of Section 32.27(c) (3) of the FCC Rules and are not required to be recorded solely at fully distributed cost.

The Company offered to provide KPMG with data regarding the fair market value of the leases for Vehicles and Other Work Equipment provided by TTI to the Company. However, KPMG refused to accept such data regarding the fair market value of the leases and lease payments.

The Company will provide a more detailed response to the "Lease Payment for Vehicles and Other Work Equipment" item if and when KPMG properly considers fair market value data, and issues a revised Finding.

The Company agrees with the second item in this finding. The Company has implemented procedures to review and approve the account classification of charges between the regulated and nonregulated operations. The second finding was actually discovered by the Company and corrected within 2005, but the Company did fail to reclassify two invoices to the nonregulated operations.

The Company agrees with the third item in this finding. The Company has implemented procedures to review and approve the account classification of vendor invoices. The items identified in the third finding were discovered in 2004 by the Company and corrected on a going forward basis.

The Company has not had sufficient time and has not received documentation from KPMG in adequate enough detail to verify the calculations of the impacts of the second and third items on HCL, LSS or ICLS disbursements.

**KPMG Response** The parent company TTI provides vehicle and equipment lease services solely to the Beneficiary. KPMG requested TTI and the Beneficiary to provide documentation supporting the fully distributed cost of the Vehicles involved in the lease payments, which they were unable to provide.

In addition, all findings were formally communicated at the end of

been reviewed by NECA at the time it was made. While there was some concern about whether the adjustment to correct prior year deferred taxes was correct, the adjustment was allowed to remain in the cost study. After further discussions with the KPMG tax personnel, it was determined that the adjustment should not have impacted operating tax expense. ▲

The Company has not had sufficient time and has not received documentation from KPMG in adequate enough detail to verify the calculations of the impacts shown in this report on HCL, LSS or ICLS disbursements.

**KPMG Response**

All findings were formally communicated at the end of fieldwork. Thus, the Beneficiary had over four weeks to review the monetary impacts.

## APPENDIX B



Universal Service Administrative Company

High Cost and Low Income Division

By Certified Mail, Return Receipt Requested

October 5, 2010

Debi Nobles  
Vice President, Regulatory Affairs  
Walnut Hill Telephone Company  
505 Plaza Circle, Suite 200  
Orange Park, FL 32073

Re: Action to be Taken Resulting from High Cost Audit of Walnut Hill Telephone Company (SAC 401729) Audit Report HC-2009-FL-056, Follow-up Audit to HC-2007-166

Dear Debi Nobles:

A follow-up audit of Walnut Hill Telephone Company for Study Area Code (SAC) 401729 was conducted on behalf of the USAC Internal Audit Division (IAD) and the Federal Communications Commission (FCC) Office of Inspector General (OIG) for the period July 1, 2006 through June 30, 2007. The final report from that follow-up was sent to the company on September 28, 2010.

As is USAC's policy with adverse or disclaimer opinions, the follow-up audit was required to quantify the monetary effect of audit HC-2007-166 conducted by Deloitte & Touche LLP. The effect quantified will result in a recovery of \$1,594,057 of High Cost support for SAC 401729. Please refer to the audit report for details on the funds being recovered. USAC will recover these funds from your December 2010 High Cost support payment, which will be disbursed at the end of January 2011.

Consistent with current administrative practice, if the recovery amount exceeds the company's disbursement for that month, USAC will continue to offset the remaining recovery amount balance against subsequent High Cost support disbursements until such time as the full amount is recovered. If necessary, USAC reserves the right to invoice and collect any remaining amounts owed.

As is the case with any decision of the USF administrator, you have the right to appeal this decision directly to the FCC pursuant to 47 C.F.R. § 54.719. The appeal must be filed within 60 days of the date of this letter as required by 47 C.F.R. § 54.720(a) and must conform to the filing requirements of 47 C.F.R. § 54.721. Additional information about the FCC appeals process may be found at <http://www.usac.org/hc/about/filing-appeals.aspx> under "OPTION B."

Sincerely,

Craig Davis  
Director, High Cost

## APPENDIX C

LAW OFFICES  
**BLOOSTON, MORDKOFKY, DICKENS, DUFFY & PRENDERGAST, LLP**  
2120 L STREET, NW, SUITE 300  
WASHINGTON, DC 20037

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November 29, 2010

AFFILIATED SOUTH AMERICAN OFFICES

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LEGISLATIVE CONSULTANT

EUGENE MALISZEWSKY  
DIRECTOR OF ENGINEERING

WRITER'S CONTACT INFORMATION

(202) 828-5510  
bhd@bloostonlaw.com

By Electronic Mail

Letter of Appeal  
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Universal Service Administrative Company  
2000 L Street NW, Suite 200  
Washington, DC 20036  
[hcfilings@hcli.universalservice.org](mailto:hcfilings@hcli.universalservice.org)

**Re: Walnut Hill Telephone Company**  
**Study Area Code No. 401729**  
**Audit No. HC-2009-FL056, Follow-up Audit to HC 2007-166**

Dear Sir or Madam:

Walnut Hill Telephone Company ("Walnut Hill") hereby appeals Finding 2a of the USAC Management Response, dated August 10, 2010, regarding the referenced Improper Payment Information Act Audit of the High Cost Program of Walnut Hill. Walnut Hill received the USAC High Cost Management Response on October 1, 2010, so that this appeal is timely filed.

Contact Information

The contact information for the Walnut Hill representatives who can most readily discuss this appeal with USAC is:

Deborah Nobles  
Townes Telecommunications Services Corporation  
505 Plaza Circle, Suite 200  
Orange Park, Florida 32073-9409  
Telephone: 904-688-0029  
Facsimile: 904-688-0025

Email: dnobles@townes.net

and

Benjamin H. Dickens, Jr., Regulatory Counsel  
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP  
2120 L Street NW, Suite 300  
Washington, DC 20037  
Telephone: (202) 659-0830  
Facsimile: (202) 828-5568  
Email: bhd@bloostonlaw.com

### **Decision Appealed**

Walnut Hill appeals Finding 2a of the USAC Management Response and the KPMG LLP audit report, dated August 4, 2010, which states: "Twenty six of the 30 exceptions related to lease payments, of \$94,717 per month, for Vehicles and Other Work Equipment, made by the Beneficiary to its parent company (TTI), were unsupported. In addition, these lease payments were not in compliance with FCC Rules and Orders governing affiliate transactions and were determined using a "fair market value" rate, when the Rules require that such transactions be recorded on a fully distributed cost basis. These expenses totaled \$2,117,978: \$1,059,010 for 2004 and \$1,058,968 for 2005."

The USAC Management Response states that: "USAC High Cost management concurs with the auditor. The Carrier does not have documentation consistent with Part 32 rules necessary to support account data reported in its filings with the National Exchange Carrier Association (NECA) and USAC." The USAC Management Response further states: "As directed by the FCC, USAC is obligated to implement all recommendations arising from the audits including recovery of funds that may have been improperly disbursed to beneficiaries. Therefore, USAC will recover High Cost support in the amount of \$447,967."

Walnut Hill appeals these findings and statements with respect to Other Work Equipment. Walnut Hill also appeals the USAC determination to recover that portion of the \$447,967 associated with its Finding 2a with respect to Other Work Equipment.

### **Basis of Appeal**

#### **Fair Market Value is the Most Accurate Method to Determine Other Work Equipment Expense**

USAC has rejected all the lease payments made by Walnut Hill to TTI because such payments were not based on fully distributed cost. However, it is not reasonable to expect a small company such as Walnut Hill to purchase the Other Work Equipment identified on Attachment A because this equipment is capital intensive and it would not be economic for a small company to do so.

Moreover, as shown in Attachment A, the most reasonable and economic course for Walnut Hill was to lease this equipment from TTI. As shown in Attachment A, in most cases, Walnut Hill would have been charged a lease rate greater than the rate it paid if Walnut Hill had leased this equipment from a third-party vendor. Further, even though the lease rate paid by Walnut Hill was greater than the third-party rate for a few items of equipment, overall Walnut Hill's lease expense was significantly reduced by leasing the equipment from TTI. Walnut Hill obtained the third-party lease rates from Mr. Jimmy Kuykendall of Equipment World Inc., by letter dated June 22, 2010, which is attached hereto as Attachment B. Therefore, by obtaining a discounted lease rate from TTI for most of the equipment, Walnut Hill was able to significantly reduce its lease expense for Other Work Equipment.

Accordingly, the Commission's rule should not be applied in this case. Walnut Hill requests USAC to consider its fair market value data and issue a revised finding.

## **II. Conclusion**

Based on the foregoing, Walnut Hill asks USAC to revise its findings as discussed herein.

Respectfully submitted,  
**WALNUT HILL TELEPHONE COMPANY**

By Benjamin H. Dickens, Jr. /mgf  
Benjamin H. Dickens, Jr.  
Its Attorney

		Monthly Lease Rate	Annual Lease	3rd-Party Lease Rate	Annual Lease
T-65	TAMPER	150.00	1,800.00	\$ 500.00	6,000.00
T-121	FREIGHTLINER	943.94	11,327.28	\$ 2,000.00	24,000.00
T-41	KW BY DAY	2,599.00	31,188.00	\$ 4,000.00	48,000.00
T-30 & T-31	TRAILERS (2)	1,200.00	14,400.00	\$ 1,200.00	14,400.00
T-01	TILTBED	500.00	6,000.00	\$ 600.00	7,200.00
T-21	D6 CAT	7,800.00	93,600.00	\$ 6,500.00	78,000.00
T-23	BACKHOE	1,800.00	21,600.00	\$ 2,250.00	27,000.00
T-45	LOWBOY	300.00	3,600.00	\$ 1,500.00	18,000.00
T-48	CASE DOZER	1,800.00	21,600.00	\$ 2,250.00	27,000.00
T-49	D7G DOZER	7,800.00	93,600.00	\$ 9,000.00	108,000.00
T-52	D7G DOZER	7,800.00	93,600.00	\$ 9,000.00	108,000.00
T-60	CHIPPER	450.00	5,400.00	\$ 500.00	6,000.00
T-51	D7G DOZER	7,800.00	93,600.00	\$ 9,000.00	108,000.00
T-66	JD DOZER	1,800.00	21,600.00	\$ 4,500.00	54,000.00
T-27	580SL BACKHOE	1,800.00	21,600.00	\$ 2,250.00	27,000.00
T-42	T420 MAC	3,000.00	36,000.00	\$ 2,000.00	24,000.00
T-163	CAT GEN AT BRADLEY	1,450.00	17,400.00	\$ 2,000.00	24,000.00
T-164	CAT GEN AT WINTROP	1,450.00	17,400.00	\$ 2,000.00	24,000.00
T-146 thru T148	G6100R GENERATOR (3)	4,050.00	48,600.00	\$ 2,250.00	27,000.00
T-150 & T-151	ONAN PRO5000E (2)	2,700.00	32,400.00	\$ 1,500.00	18,000.00
T-152 thru T-155	CRAFTSMAN 4200 (4)	4,200.00	50,400.00	\$ 3,000.00	36,000.00
T-38	475 CASE	1,800.00	21,600.00	\$ 4,500.00	54,000.00
T-25	BACKHOE 580K	1,800.00	21,600.00	\$ 2,250.00	27,000.00
T-68	BACKHOE 580K	1,800.00	21,600.00	\$ 2,250.00	27,000.00
T-36	450 DOZER	1,800.00	21,600.00	\$ 4,500.00	54,000.00
T-06	TRENCHER 8500 VERMEER	3,750.00	45,000.00	\$ 4,500.00	54,000.00
T-77	REEL TRAILER	300.00	3,600.00	\$ 600.00	7,200.00
T-33	MAXI SNEAKER	1,350.00	16,200.00	\$ 1,750.00	21,000.00
T-113	BELSHE TRAILER	325.00	3,900.00	\$ 600.00	7,200.00
T-114	BELSHE TRAILER SM	300.00	3,600.00	\$ 600.00	7,200.00
T-70	LOCATOR	145.00	1,740.00	\$ 250.00	3,000.00
T-71	DW ROD PUSHER	350.00	4,200.00	\$ 500.00	6,000.00
T-78	DW W/DIGGING ATT	3,750.00	45,000.00	\$ 4,500.00	54,000.00
T-81	MARLOW MUD PUMP	300.00	3,600.00	\$ 500.00	6,000.00
T-72	BLUE TRAILER & T32	700.00	8,400.00	\$ 1,500.00	18,000.00
T-123	D4 CAT	7,800.00	93,600.00	\$ 4,500.00	54,000.00
		87,662.94	1,051,955.28	101,100.00	1,213,200.00



June 22, 2010

Johnny Ross  
Townes Telecommunications, Inc.  
120 East 1st Street  
Lewisville, AR 71845

Dear Johnny:

Per your request, I have researched rental rates from the 2004-5 time frame. Please review the table below. If there is anything else I can do, please let me know.

ITEM DESCRIPTION	SIZE CLASS	WEEKLY RATE	MONTHLY RATE	HOURLY RATE	APPLICABLE EQUIPMENT (T #s)
<b>AUTOMOBILES</b>					
Small Truck / SUV	GVWR < 6,000 LB	\$175	\$500		58, 88, 26, 86, 14, 59, 62, 88
Full Size Truck / SUV	GVWR 6-8,000 LB	\$285	\$850		10, 98, 60, 141
3/4 Ton Truck	GVWR 8-10,000 LB	\$350	\$1,000		40
1 Ton Truck	GVWR >10,000 LB	\$425	\$1,250		90, 115
<b>TRUCKS / TRAILERS</b>					
Truck Tractor	GVWR >50,000 LB	\$675	\$2,000		121, 41, 42,
Lowboy Trailer	GVWR 70-110,000 LB	\$500	\$1,500		45
Utility Trailer	GVWR <20,000 LB	\$200	\$600		01, 31, 113, 114,
* Truck Tractor w/ Lowboy (operator & fuel)				\$200	41
<b>HEAVY EQUIPMENT</b>					
Large Crawler Tractor / Bulldozer	200 HP / 45,000 LB	\$2,850	\$9,000		51, 52
Medium Crawler Tractor / Bulldozer	140 HP / 35,000 LB	\$2,200	\$6,500		21
Small Crawler Tractor / Bulldozer	80 HP / 25,000 LB	\$1,500	\$4,500		68, 38, 38, 123
Loader / Backhoe	80 HP / 20,000 LB	\$750	\$2,250		69, 54, 25, 23,
<b>GENERATORS</b>					
Diesel-Powered, Trailer-Mounted	40-60 KW	\$675	\$2,000		157, 168
Gas-Powered Portable	<10 KW	\$250	\$750		146, 150, 152
<b>TRENCHERS</b>					
Diesel-Powered, Self-Propelled	70-90 HP	\$1,500	\$4,500		06, 84
Diesel-Powered, Self-Propelled	<70 HP	\$585	\$1,750		07
<b>MISCELLANEOUS</b>					
Plate Vibrator		\$175	\$500		65
Chipper		\$175	\$500		80
Locator		\$85	\$250		122
Rod Pusher		\$175	\$500		71
Mud Pump		\$175	\$500		61

Thank you,

*Jimmy*  
Jimmy Kuykendall

**APPENDIX D**



*Administrator's Decision on High Cost Program Beneficiary Appeal*

Via Email and Certified Mail

October 24, 2011

Deborah Nobles  
Townes Telecommunications Services Corporation  
505 Plaza Circle, Suite 200  
Orange Park, FL 32073-9409

Re: Appeal of the 2009 FCC Office of Inspector General USF Audit Improper Payment Information Act (IPIA) Audit of High Cost Program Beneficiary: Walnut Hill Telephone Company (SAC 401729), Follow-up Audit Report HC-2009-FL-056 for Audit Report HC-2007-166

Dear Ms. Nobles:

The Universal Service Administrative Company (USAC) has reviewed the appeal you filed on behalf of Walnut Hill Telephone Company (Walnut Hill), dated November 29, 2010, concerning USAC's decision to recover \$447,967 in previously paid High Cost Program support disbursed for the 12-month period ending June 30, 2007. The recovery amount was determined by an audit of Walnut Hill conducted by KPMG LLP, under the FCC Office of Inspector General (OIG) Universal Service Fund (USF) audit program.

Walnut Hill appealed the results of finding HC2009FL056-F02(a) and requested that USAC rescind its decision to recover this support by waiving the applicable FCC rule. USAC is not authorized to waive Commission rules.

Decision on Appeal: Denied. USAC has determined that \$447,967 should be recovered.

Discussion

Walnut Hill makes equipment lease payments to its parent company, TTI. As part of the audit, it was determined that some of these expenses were unsupported. In addition, these payments did not comply with FCC rules that state that affiliate transactions must be recorded on a fully distributed cost basis. Walnut Hill, in its appeal, maintained that it was reasonable to lease the equipment from the parent company because if Walnut Hill had not leased from TTI, it would not have been able to afford leasing equipment from a

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Ms Deborah Nobles  
Walnut Hill Telephone Company  
October 24, 2011  
Page 2 of 3

third party vendor. Walnut Hill further asserted that the use of the fair market value is appropriate in this case and asked that the FCC rule not be applied.<sup>1</sup>

HC2009FL056-F02-Unsupported and Inappropriately Classified Expenses

In this finding, 30 exceptions were identified relating to lease payments. Of these exceptions, 26 were identified as not having supporting documentation. In addition, these lease payments were not in compliance with FCC regulations governing affiliate transactions since they were determined using the fair market value method and not recorded on a fully distributed cost basis.<sup>2</sup>

Walnut Hill asserted that the company is too small to record services at fully distributed cost and leases its equipment from its parent company at fair market value. In its appeal, Walnut Hill provided an attachment that outlines what its lease payments are in comparison to what a third party lease rate would be.<sup>3</sup> Walnut Hill pointed out that leasing from TTI is cheaper than leasing from a third-party vendor in most cases and concluded its appeal by requesting that USAC consider allowing the use of the fair market value instead of applying the FCC rule on affiliate transactions.

While USAC does not dispute Walnut Hill's assertion concerning its lease expense, 47 C.F.R. § 32.27(c)(3) specifies that "services received by a carrier from its affiliate(s) that exist solely to provide services to members of the carrier's corporate family shall be recorded at fully distributed cost."<sup>4</sup> USAC recognizes the carrier's assertion that it may "have been charged a lease rate greater than the rate it would have paid if [it] had leased this equipment from a third-party vendor"<sup>5</sup> other than TTI. However, as KPMG stated in the audit report, TTI provides vehicle and equipment lease services solely to the beneficiary,<sup>6</sup> therefore the carrier is obligated to follow the requirements of 47 C.F.R. § 32.27(c)(3), which obligate it to record the lease expense at the fully distributed cost.

Walnut Hill's appeal did not dispute its non compliance with 47 C.F.R. § 32.27(c)(3). Rather, Walnut Hill's requested that USAC consider "[Walnut Hill's] fair market value

<sup>1</sup> Letter from Benjamin H. Dickens, Jr. of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP for Walnut Hill Telephone Company to High Cost and Low Income Division, USAC, dated Nov. 29, 2010, page 3 (*Walnut Hill Appeal Letter*).

<sup>2</sup> Letter and Independent Accountants Report No. HC-2009-FL056 from KPMG LLP to Walnut Hill Telephone Company, dated Aug. 4, 2010, page 2 (*Independent Accountants Report*).

<sup>3</sup> *Walnut Hill Appeal Letter*, Attachment A.

<sup>4</sup> 47 C.F.R. § 32.27(c)(3) ("Threshold. For purposes of this section, carriers are required to make a good faith determination of fair market value for a service when the total aggregate annual value of that service reaches or exceeds \$500,000 per affiliate. When a carrier reaches or exceeds the \$500,000 threshold for a particular service for the first time, the carrier must perform the market valuation and value the transaction in accordance with the affiliate transactions rules on a going-forward basis. All services received by a carrier from its affiliate(s) that exist solely to provide services to members of the carrier's corporate family shall be recorded at fully distributed cost").

<sup>5</sup> *Walnut Hill Appeal Letter*, page 3.

<sup>6</sup> *Independent Accounts Report*, page 16.

Ms Deborah Nobles  
Walnut Hill Telephone Company  
October 24, 2011  
Page 3 of 3

data"<sup>7</sup> in contravention of the Commission rule discussed above. USAC is not authorized to waive FCC rules. Therefore, USAC hereby denies the appeal and will recover \$447,967 in High Cost Support.

#### USAC Action and Walnut Hill Appeal Rights

In its appeal letter to USAC, Walnut Hill did not appeal the results of HC2009FL056-F01 with a monetary effect of \$784,041, HC2009FL056-F03 with a monetary effect of \$312,309, HC2009FL056-F04 with a monetary effect of \$53,351, HC2009FL056-F05 with a monetary effect of \$33,252, HC2009FL056-F06 with a monetary effect of \$6,600 and HC2009FL056-C01 with a monetary effect of \$282.<sup>8</sup> These amounts have been recovered.

USAC hereby denies Walnut Hill's appeal and will recover of \$447,967 in previously paid High Cost Program support within sixty (60) days of the receipt of this decision through the monthly disbursement process. If the recovery amount exceeds the current month's disbursement, USAC will continue to net the recovery amount against subsequent monthly disbursements. USAC also reserves the right in its discretion and at anytime to issue an invoice to Walnut Hill for all or a portion of the amount to be recovered. If any further errors are found in Walnut Hill's reporting for the period under audit herein, USAC reserves the right to recover the financial impact of those deviations.

~~If you wish to appeal this decision~~, you may file an appeal pursuant to the requirements of 47 C.F.R. Part 54 Subpart I. Detailed instructions for filing appeals are available at <http://www.usac.org/hc/about/filing-appeals.aspx>. Submitting a waiver to the FCC follows the same process as filing an appeal with the FCC.

//s// Universal Service Administrative Company

<sup>7</sup> Walnut Hill Appeal Letter, page 3.

<sup>8</sup> Walnut Hill Appeal Letter, page 2.

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DIRECTOR OF ENGINEERING

ARTHUR BLOOSTON  
1914 - 1999

December 20, 2011

FILED/ACCEPTED

DEC 20 2011

Federal Communications Commission  
Office of the Secretary

**WRITER'S CONTACT INFORMATION**

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VIA HAND DELIVERY

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

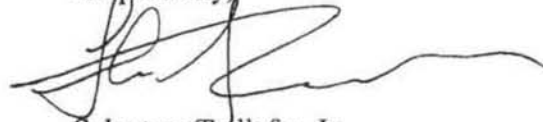
RE: Request for Review by Walnut Hill Telephone Company of a Decision of the Universal Service Administrator and Petition for Waiver  
CC Docket No. 96-45

Dear Ms. Dortch:

Pursuant to sections 1.3, 32.18, 54.719 and 54.722 of the Commission's rules,<sup>1</sup> Walnut Hill Telephone Company hereby submits an original and four copies of its Request for Review by Walnut Hill Telephone Company of a Decision of the Universal Service Administrator and Petition for Waiver.

Please do not hesitate to contact the undersigned if there are any questions regarding this filing.

Respectfully,



Salvatore Taillefer, Jr.

<sup>1</sup> 47 CFR 1.3, 47 CFR 32.18, 47 CFR 54.719, & 47 CFR 54.722.

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